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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

GERALD HESTER, on behalf of himself and  
all others similarly situated,

Plaintiff,

vs.

VISION AIRLINES, INC.,

Defendant.

CASE NO.: **2:09-CV-00117-RLH-RJJ**

**DEFENDANT VISION AIRLINES'  
RESPONSE TO PLAINTIFFS MOTION  
FOR SANCTIONS**

Defendant, Vision Airlines, Inc., by and through its counsel, James A. Kohl, Esq., of  
the law firm Howard & Howard Attorneys PLLC, files this Response to Motion for  
Sanctions. This Response is based on the Points and Authorities attached hereto together

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with the Papers and Pleadings on file herein and any oral argument received by the Court.

Dated this 7<sup>th</sup> day of February, 2014.

**Howard & Howard Attorneys PLLC**

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**POINTS AND AUTHORITIES**

**A. Vision does Not Own Any Aircraft**

Plaintiffs are frustrated because Vision is not the cash cow that they believed. While it is true that Vision paid significant multimillion dollar judgments to the Plaintiffs in this case several years ago, those payments were made at a time when Vision had multiple governmental contracts that generated considerable revenue. Vision lost those contracts. Vision does not have the ability to pay Plaintiffs judgment in a lump sum judgment nor does it have any significant assets that Plaintiffs could execute on to satisfy their judgment.

The Class claims that Vision is hiding assets from the Class. The reality is that Vision is but a shell of its former does not have assets to hide. The planes that are shown on the website belong to companies that are not parties to this suit. Vision does not own any planes, period. Vision provided written responses to the Class' discovery stating that it does not own any aircraft. Plaintiffs are upset because they realize that there is nothing to execute on. That however is not a reason to sanction Vision.

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1 As for the planes that Vision used to lease, Vision was unable to service the debt on  
2 those planes. When Vision failed to make timely payments under the leases, the planes were  
3 repossessed by the lessor. Accordingly there are no sale contracts under which Vision  
4 received funds for the planes and therefore no documents for Vision to produce regarding the  
5 planes.  
6

7 Vision does not own or possess the plane identified as 427VB. The report that  
8 Plaintiffs rely on states:

9 **Important:** The Public Records and commercially available data  
10 sources used on reports have errors. Data is sometimes entered poorly,  
11 processed incorrectly and is generally not free from defect. Before relying on  
12 any data this system supplies, it should be independently verified.

13 427VB is not a plane that Vision owns, as it does not own any planes. Vision does not  
14 recognize that plane as ever having been part of its fleet. Vision's operations have dwindled  
15 to providing pilots and crews for flights. It does not own any planes. Vision should not be  
16 sanctioned for failing to provide titles to equipment that it does not own. Nor should it be  
17 sanctioned for not producing contracts of sale, when the planes were repossessed by the  
18 lessors.  
19

20 **B. Vision Produced the Car Titles in its Possession**

21 Plaintiffs attached a printout of car registrations claiming that Vision is hiding assets  
22 from it. As with the other list, the car registrations are not verified. In fact, the largest  
23 category of vehicles on the list, 12, are duplicates of the other vehicles on the list (7, 8, 12, 13,  
24 14, 18, 20, 21, 23, 24, 25 are all duplicate listings). Four of the vehicles that appear on the list  
25 were identified by Vision in VisionHH11096-11101. Vision also identified two vehicles  
26 which are not on the list. That is hardly the act of an entity that is trying to hide its assets.  
27 Vision does not have the titles to the other vehicles on the list in its possession. For the most  
28

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1 part, Vision leases its vehicles, so some of the titles that are on the list may be with the  
2 lessor(s). Additionally, Vision is aware that at least one car from the list was totaled in an  
3 accident. Vision produced the titles that it has in its possession, including two cars not  
4 identified in Plaintiff's list. Because Vision produced the titles that it has in its possession it  
5 should not be sanctioned.  
6

7 **C. Vision Is Not In Possession of Contracts That it Is Not A Party To**

8 The Class asks the Court to sanction Vision for not producing contracts that Vision is  
9 not a party to. "When documents are sought from a nonparty, the usual method of compelling  
10 production is via a subpoena under Fed.R.Civ.P.45." *Hobley v. Burge*, 433 F.3d 946, 949 (7th  
11 Cir. 2006) (citing Fed. R. Civ. P. 34(c)). In fact, a "subpoena duces tecum is the only way to  
12 compel a nonparty to produce documents or other materials." 9A Charles A. Wright, et al.,  
13 Federal Practice and Procedure § 2456. If the Class wants documents from entities that are  
14 not parties to this suit, it needs to subpoena them under Fed. R. Civ. Pro. 45. Because Vision  
15 is not in possession of third party contracts, it did not produce said contracts. Vision cannot  
16 be sanctioned for not producing items it does not possess. The Plaintiffs' Motion should  
17 therefore be denied.  
18  
19

20 **D. Vision Is Not Receiving Payment from The Guyana Contract**

21 The Class claims that Vision should have identified and produced a contract that  
22 involves flights that are scheduled to Georgetown Guyana. The Class' interrogatory asks  
23 Vision to identify contracts that Vision is receiving payment on. Vision is not currently flying  
24 the flights to Georgetown. Vision did contract with Dynamic Airways to fly the flights to  
25 Georgetown. Vision hoped that Dynamic could fly the flights while Vision ramped up to  
26 service the contract. Dynamic flew the flights in December, but they have since been  
27  
28

suspended. Vision correctly answered Plaintiff's interrogatory because it was not the party that received the economic benefit of the agreement, and the flights are not currently flying. Sanctions are therefore not warranted.

**E. Vision Did Not File its 2012 Tax Return Until January, 2014**

Plaintiffs claim that Vision is hiding assets because it failed to produce its 2012 tax return when the other documents were produced. Vision filed the return on January 14, 2014 and produced a copy of the return today. The return shows a \$9.3 million dollar loss for 2012. At first blush, Vision's oversight on this item would appear to be an attempt to hide its assets from the Class. However, the return demonstrates that Vision lost \$9.3 million dollars in 2012. The 2012 return confirms that Vision has in fact, fallen on hard times.

**F. There is no basis to Hold Vision in Contempt**

The real reason for the motion is contained in the Class' request that Vision and/or Mr. Acor be held in contempt and forced to bond the judgment. Not only does the Class' request grossly overreach what it is entitled to, the Class has no basis in the law to seek contempt. The Class asks that this Court hold Vision and Mr. Acor in contempt of court pursuant to Fed. R. Civ. Pro 42(a). Fed. R. Civ. Pro 42 states:

**Rule 42. Consolidation; Separate Trials**

(a) Consolidation. If actions before the court involve a common question of law or fact, the court may:

- (1) join for hearing or trial any or all matters at issue in the actions;
- (2) consolidate the actions; or
- (3) issue any other orders to avoid unnecessary cost or delay.

(b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When

1 ordering a separate trial, the court must preserve any federal right to a jury  
2 trial.

3 There is no basis at all under Rule 42 to hold Vision in contempt. It does not contain  
4 the word contempt, nor does it discuss in any way the concept of contempt. Additionally, the  
5 conduct that Plaintiffs complain of was previously presented to the Court with the request that  
6 the Court find Mr. Acor in contempt. It did not. As such it is *res juiticata* to the current  
7 Motion. Moreover the Plaintiffs' request that the Court force Vision and/or Mr. Acor to post  
8 a bond for the amount of the judgment is unfounded in the law. There is no case, statute or  
9 rule that requires a defendant to pay a judgment or to bond a judgment. From time to time,  
10 debtors agree to make voluntary payments of judgments. Sometimes they bond judgments on  
11 appeal. However, a judgment debtor is not required to pick up a pen and write the plaintiff a  
12 check to satisfy a judgment. Similarly, courts do not order parties to pay judgments. They  
13 can order parties to appear at judgment debtor exams, but not to pay the judgment. In fact,  
14 debtors have the absolute right to declare bankruptcy and not pay judgments; something  
15 which is likely to occur in this case. 11 U.S.C. 101 *et. seq.* A judgment is a right to collect  
16 money, it is not a guaranty of payment.  
17  
18  
19

20 Plaintiffs have not presented the Court with sufficient facts to find Vision in contempt,  
21 let alone order it or Mr. Acor to post a bond for \$1.8 million dollars. The request is gross  
22 overreaching by the Plaintiffs. There is no basis whatsoever under Fed. R. Civ. Pro Rule 42  
23 for Vision to be held in Contempt, the Court must therefor deny the request as unfounded  
24 under the law.  
25

26 **G. There is no basis to Hold Mr. Acor in Contempt**

27 The Class also asks the Court to summarily find Mr. Acor in contempt of Court. It is  
28 clear that the Class hates Mr. Acor. That however is not a basis to find someone in contempt

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1 of Court. The Class has not provided any facts that support Mr. Acor being held in contempt  
2 of court. Moreover, Fed. R. Civ. Pro. 42 has no provisions that discuss contempt let alone  
3 support an award of contempt of court. “This circuit has held that in a contempt proceeding,  
4 whether denominated civil or criminal, the alleged contemnor is entitled to the procedural  
5 safeguards of notice and a reasonable time to prepare a defense.” *United States v. Powers*,  
6 629 F.2d 619, 626 (9th Cir. 1980) (citing *United States v. Hawkins*, 501 F.2d 1029, 1031 (9th  
7 Cir.), cert. denied, 419 U.S. 1079, 95 S.Ct. 668, 42 L.Ed.2d 674 (1974); *United States v. Alter*,  
8 482 F.2d 1016, 1023 (9th Cir. 1973)). Plaintiffs’ reliance on Fed. R. Civ. Pro. 42 is fatal to  
9 their request for sanctions. Plaintiffs have not identified what Mr. Acor has done wrong such  
10 that he could be held in contempt of Court. The procedural safeguards of notice and a  
11 reasonable time to prepare a defense are not satisfied. Accordingly, the request should be  
12 summarily denied.

#### 13 H. Conclusion

14 Plaintiffs are upset that Vision does not have sufficient assets to pay their judgment  
15 (which is why they are asking for an order that Vision or Mr. Acor bond the judgment).  
16 Vision does not own any planes; it owns a few vehicles and little else. Vision answered  
17 Plaintiffs discovery and identified the assets that it does have. Vision’s scale of operations  
18 has been significantly reduced from its heyday when it serviced government contracts.  
19 Vision has lost money for the last few years. Vision has not been trying to hide its assets or  
20 willfully disobeying the Court. Vision has fallen on hard times and simply does not have  
21 enough assets to pay the Plaintiffs judgment. Vision responded to the requests and produced  
22 what it had in its possession. Plaintiffs are understandably disappointed that Vision is not  
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1 collectable. Vision made a good faith effort to answer the discovery, therefore the Motion  
2 should be denied with prejudice.

3  
4 Moreover, Plaintiffs request that Vision and Mr. Acor should be held in contempt of  
5 Court and post a bond for the amount of the judgment illustrates what the present motion is  
6 really about. Plaintiffs recognize that payment of the judgment is unlikely. They hope that  
7 the Court will misapply Fed. R. Civ. Pro. 42 and award them what they are unlikely to get  
8 from Vision, money. The Motion's true purpose is clear, but is wholly unsupported by Fed.  
9 R. Civ. Pro. 42. Vision is a judgment debtor that cannot pay the Class' judgment. Falling  
10 on hard times does not warrant finding Vision in contempt of Court. Nor does it warrant  
11 forcing Vision or Mr. Acor to post a bond in the amount of the judgment. There is no basis  
12 under Fed. R. Civ. Pro. 42 to hold Vision or Mr. Acor in contempt of Court. The Court  
13 should Deny Plaintiffs' motion with prejudice.  
14  
15

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**CERTIFICATE OF ELECTRONIC FILING  
AND CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on the \_\_\_\_ day of January, 2014, I electronically filed a true and correct copy of the foregoing document with the Clerk of this Court using the CM/ECF system, which sent notification of such filing to the following:

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